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Attorneys for Plaintiffs TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA and THE TRAVELERS INDEMNITY COMPANY OF CONNECTICUT

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

TRAVELERS PROPERTY CASUALTY
COMPANY OF AMERICA, a Connecticut
corporation; and THE TRAVELERS
INDEMNITY COMPANY OF
CONNECTICUT, a Connecticut corporation,

Plaintiffs,

PROJECT FROG, INC., a Delaware corporation; USS CAL BUILDERS, INC., a California corporation; ROCKHILL INSURANCE COMPANY, and DOES 1 through 10 inclusive.

Defendants

Case No.:

COMPLAINT FOR:

**(1) DECLARATORY RELIEF;
(2) EQUITABLE REIMBURSEMENT;
(3) EQUITABLE CONTRIBUTION**

For their claims against Defendant USS CAL BUILDERS, INC., Defendant PROJECT FROG, INC., ROCKHILL INSURANCE COMPANY, and Does 1 through 10, Plaintiffs TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA and THE TRAVELERS INDEMNITY COMPANY OF CONNECTICUT allege as follows:

111

1 JURISDICTION

2 1. Plaintiff TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA
3 is now and at all relevant times was, a corporation, existing under the laws of the State of
4 Connecticut, with its principal place of business in Connecticut. TRAVELERS PROPERTY
5 CASUALTY COMPANY OF AMERICA is, and at all relevant times was, an insurance carrier
6 eligible to do business as an insurer in the State of California.

7 2. Plaintiff THE TRAVELERS INDEMNITY COMPANY OF CONNECTICUT is
8 now, and at all relevant times was, a corporation, existing under the laws of the State of
9 Connecticut, with its principal place of business in Connecticut. THE TRAVELERS
10 INDEMNITY COMPANY OF CONNECTICUT is, and at all relevant times was, an insurance
11 carrier eligible to do business as an insurer in the State of California.

12 3. Plaintiffs TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA
13 and THE TRAVELERS INDEMNITY COMPANY OF CONNECTICUT shall collectively be
14 referred to herein as "Travelers."

15 4. Defendant USS CAL BUILDERS, INC. ("USS Cal") is now, and at all relevant
16 times was, a corporation, existing under the laws of the state of California, with its principal
17 place of business in Stanton, California.

18 5. Defendant PROJECT FROG, INC. ("Project Frog") is now, and at all relevant
19 times was, a corporation, existing under the laws of the state of Delaware with its principal
20 place of business in San Francisco, California.

21 6. Defendant ROCKHILL INSURANCE COMPANY ("Rockhill") is, and at all
22 relevant times hereto was, an Arizona corporation, with its principal place of business in Kansas
23 City, Missouri. Rockhill is, and at all relevant times was, an insurance carrier eligible to do
24 business in California, and issued policies of insurance to Atlas Pellizzari Electric Inc., as
25 further detailed below.

26 7. Defendants sued herein as DOES 1 through 10 (hereinafter, the "Doe
27 Defendants"), inclusive, are sued herein by such fictitious names because Travelers is unaware
28 of the true names and capacities of said Doe Defendants. Travelers will amend this Complaint

1 to reflect the true names when the true names are ascertained. Travelers is informed and
2 believes and thereon alleges that said Doe Defendants are responsible for the acts, events, and
3 circumstances alleged herein, or are interested parties to this action.

4 8. USS Cal, Project Frog, and the Doe Defendants 1-5 shall be collectively referred
5 to as the “Defendants” in this complaint. Rockhill and Doe Defendants 6-10 shall be
6 collectively referred to as the “Insurer Defendants” in this complaint.

7 9. This Court has original jurisdiction under 28 U.S.C. § 1332 in that this is a civil
8 action between citizens of different states in which the matter in controversy exceeds, exclusive
9 of costs and interests, six hundred and fifty thousand dollars (\$650,000), which represents fees
10 and costs sought by the Defendants from Travelers in connection with their defense and/or
11 indemnification in the Underlying Litigation (defined at paragraph 16, *infra*). This Court has
12 diversity jurisdiction as Travelers is domiciled in Connecticut and the Defendants are domiciled
13 in California, Arizona and Delaware.

VENUE

15 10. Travelers is informed and believes and thereon alleges that this Court has
16 personal jurisdiction over the Defendants, and each of them, as they are, at all relevant times
17 hereinafter mentioned, general contractors incorporated, headquartered, and/or engaged in the
18 business of commercial construction and development in the State of California. Travelers is
19 further informed and believes and thereon alleges that this Court has personal jurisdiction over
20 the Insurer Defendants, and each of them, as they are, at all relevant times hereinafter
21 mentioned, insurance companies authorized to do business in the State of California. Moreover,
22 venue is proper as the Underlying Litigation is either currently pending or was litigated within
23 this district.

GENERAL ALLEGATIONS

The Policies Issued By Travelers

11. TRAVELERS issued the following policies of insurance:

(a) Policy no. C01D274421, effective 06/01/13 to 06/01/19, issued to T3, Inc. Policies");

(b) Policy no. DT22-CO-2D655067, effective 7/1/13 to 7/1/17, issued to Frank M Booth, Inc. dba Valley Sheet Metal (“Valley Policies”);

(c) Policy no. 4T22-CO-3080P324, effective 10/1/12 to 10/1/18, issued to ASF Electric, Inc. (“ASF Policies”);

(d) Policy no. DT22-CO-8089A274, effective 10/1/13 to 10/1/18, issued to Young Electric (“Young Policies”);

(e) Policy no. Y-630-5K16689A, effective 4/1/13 to 4/1/19, issued to Epic Metal Corporation (“Epic Policies”); and

(f) Policy nos. Y-630-4966L804, effective 7/1/12 to 7/1/13, and Y-630-4966L804, effective 7/1/13 to 7/1/17, issued to Blazer Industries, Inc. (“Blazer Policies”).

The above referenced policies are collectively referred to as the “Policies” and the above referenced insureds to whom these policies were issued are collectively referred to as the “Named Insureds”.

12. Neither Project Frog nor USS Cal are specifically named as insureds under any of the Policies.

13. All of the policies provide Travelers the right and duty to defend any insured, stating the following or language substantially similar to the following: "We will pay those sums that the insured becomes legally obligated to pay as damages because of 'bodily injury' or 'property damage' to which this insurance applies. We will have the right and duty to defend the insured against any 'suit' seeking those damages. However, we will have no duty to defend the insured against any 'suit' seeking damages for 'bodily injury' or 'property damage' to which this insurance does not apply."

14. The T3, ASF, Valley, and Young Policies contain the following Additional Insured Endorsement language:

1. WHO IS AN INSURED - (SECTION II) is amended to include any person or organization that you agree in a “written contract requiring insurance” to include as an additional insured on this Coverage Part, but:

- 1 a) Only with respect to liability for “bodily injury”, “property damage” or
2 “personal injury”; and
- 3 b) If, and only to the extent that, the injury or damage is caused by acts or
4 omissions of you or your subcontractor in the performance of “your work” to
5 which the “written contract requiring insurance applies. The person or
6 organization does not qualify as an additional insured with respect to the
7 independent acts or omission of such person or organization.

8 15. The Blazer Policies include the following language:

9 “The following is added to SECTION II – WHO IS AN INSURED:

10 Any person or organization that is a vendor and that you have agreed in a written contract
11 or agreement to include as an additional insured on this Coverage Part is an insured, but
12 only with respect to liability for ‘bodily injury’ or ‘property damage’ that:

- 13 a. is caused by an ‘occurrence’ that takes place after you have signed and executed
14 that contract or agreement; and
- 15 b. Arises out of ‘your products’ which are distributed or sold in the regular course of
16 such vendor’s business.

17 The insurance provided to such vendor is subject to the following provisions:

18 ...

- 19 b. The insurance provided to such vendor does not apply to:
 - 20 (1) ‘Bodily injury’ or ‘property damage’ for which the vendor is obligated to pay
21 damages by reason of the assumption of liability in a contract or agreement.
22 This exclusion does not apply to liability for damages that the vendor would
23 have in the absence of the contract or agreement;
 - 24 ...
 - 25 (6) Demonstration, installation, servicing or repair operations, except such
26 operations performed at such vendor’s premises in connection with the sale of
27 ‘your products;’

28 16. The Epic Policies contain no endorsements providing coverage as an additional

1 insured to any party with whom Epic agreed to provide such coverage in a written contact.

2 **The Underlying Litigation**

3 17. This action arises out of coordinated proceedings involving the construction and
4 renovation of classrooms at numerous school campuses in the San Francisco Unified School
5 District. The coordinated proceedings are entitled *USS Cal School Construction Cases*,
6 *Coordinated Proceedings*, San Francisco County Superior Court, Case No. CJC-17-004928,
7 Judicial Council Coordination Proceeding No. 4928 (the “Underlying Litigation”). The
8 coordinated proceedings include the following actions:

9 a) *USS Cal Builders, Inc. v. South San Francisco Unified School District*,
10 San Mateo County Superior Court, Case No. 16CIV02834;

11 b) *Richard Hancock, Inc. v. Project Frog, Inc.*, filed in the San Mateo County
12 Superior Court, Case No. 16CIV01589;

13 c) *Cupertino Electrics, Inc. v. Atlas Pellizzari Electric, Inc.*, San Mateo
14 County Superior Court, Case No. 16CIV01556;

15 d) *A Tiechert & Son, Inc. dba Tiechert Construction v. Berkeley Cements*,
16 *Inc.*, San Mateo County Superior Court, Case No. 16CIV01826;

17 e) *Joseph J. Albanese, Inc. v. USS Cal Builders, Inc.*, San Mateo County
18 Superior Court, Case No. 16CIV02198;

19 f) *Western Allied Mechanical, Inc. v. USS Cal Builders, Inc.*, Orange County
20 Superior Court, Case No. 30-2017-00902899-CU-BC-CJC;

21 g) *Project Frog, Inc. v. USS Cal Builders, Inc.*, San Francisco County
22 Superior Court, Case No. CGC-16-554758;

23 h) *Pioneer Contractors, Inc. v. USS Cal Builders*, San Francisco County
24 Superior Court, Case No. CGC-16-556219;

25 i) *USS Cal Builders, Inc. v. Project Frog, Inc.*, San Francisco County
26 Superior Court, Case No. CGC-17-558059;

27 j) *S&R Drywall, Inc. v. USS Cal Builders, Inc.*, San Mateo County Superior
28 Court, Case No. 1CIV05118;

1 k) *Stich Construction, Inc. v. USS Cal Builders, Inc.*, San Mateo County
2 Superior Court, Case No. 18CIV03192;

3 l) *Trident Installations v. Project Frog, Inc.*, San Francisco County Superior
4 Court, Case No. CGC-18-570623;

5 m) *USS Cal Builders, Inc. v. Project Frog, Inc.*, San Mateo County Superior
6 Court, Case No. CIV537635;

7 n) *Dinelli Plumbing Incorp. v. USS Cal Builders, Inc.*, San Mateo County Superior
8 Court, Case No. CIV538974;

9 o) *Alten Construction v. Project Frog, Inc.*, San Mateo County Superior
10 Court, Case No. CIV538555;

11 p) *Atlas Pellizzari Electric, Inc. v. USS Cal Builders*, San Mateo County
12 Superior Court, Case No. CIV538968;

13 q) *Waterproofing, Inc. v. Project Frog*, San Mateo County Superior Court,
14 Case No. CIV538989.

15 18. The allegations of the Underlying Litigation center around USS Cal's claim that
16 the San Francisco Unified School District ("SFUSD") retained USS Cal to purchase and install
17 modular school buildings on at least 15 school campuses in the district and to remodel the
18 Westborough Science Center (the "Project") pursuant to separate, campus specific, written
19 contracts. USS Cal claimed that SFUSD refused to pay in excess of \$20 million owed for the
20 Project and SFUSD claimed that the contracts were not valid and that there was property
21 damage due to faulty construction of the modular school buildings.

22 19. On or about December 14, 2016, USS Cal filed its complaint against SFUSD for
23 breach of written contract and recovery of statutory penalties.

24 20. On or about March 10, 2017, SFUSD cross-complained for breach of contract,
25 negligence, and money had and received.

26 21. Travelers is informed and believes that the evidence in this action confirms that
27 the entirety of SFUSD's allegations of defects and resulting damage arose from the modular
28 installation projects.

1 22. On or about May 20, 2017, USS Cal filed a cross-complaint against Project Frog,
 2 Inc., alleging breach of contract, contribution, and indemnity based on SFUSD's allegations of
 3 "incomplete and defective work." Additionally, USS Cal has alleged that Project Frog did not
 4 maintain its licensing as a contractor without interruption during the entirety of the Project.

5 **Tenders to Travelers**

6 23. USS Cal tendered its defense in the Underlying Litigation to Travelers pursuant
 7 to the ASF Policies and the T3 Policies. USS Cal contends that it is an additional insured
 8 pursuant to these policies for the claims asserted by SFUSD in the Underlying Litigation.

9 24. Travelers accepted the tender of the defense of USS Cal pursuant to one or more
 10 of the ASF Policies and the T3 Policies subject to reservations of rights. Travelers appointed
 11 counsel to defend USS Cal in the Underlying Litigation. Travelers has incurred more than
 12 \$300,000 in fees and costs for the defense of USS Cal in the Underlying Litigation.

13 25. Project Frog tendered its defense in the Underlying Litigation to Travelers
 14 pursuant to the Blazer Policies, ASF Policies, Valley Policies, Young Policies, and Epic
 15 Policies. Project FROG contends that it is an additional insured pursuant to the Policies for the
 16 claims asserted by USS Cal in the Underlying Litigation.

17 26. Travelers accepted the tender of the defense of Project Frog pursuant to one or
 18 more of the Blazer Policies, ASF Policies, Valley Policies, and Young Policies. Travelers
 19 appointed counsel to defend Project Frog in the Underlying Litigation. Travelers has incurred
 20 more than \$350,000 in fees and costs for the defense of Project Frog in the Underlying
 21 Litigation.

22 **Rockhill Policies and Tender to Rockhill**

23 27. Travelers is informed and believes that Rockhill insured Atlas under commercial
 24 general liability policy numbers RCGLPG00690-00, effective June 26, 2014 to June 26, 2015;
 25 RCGLPG00690-01, effective June 26, 2015 to June 26, 2016; and RCGLPG00690-02,
 26 effective June 26, 2016 to June 26, 2017.

27 28. Travelers is informed and believes that the policies include the following:

28 SECTION I –COVERAGES

1 COVERAGE A BODILY INJURY AND PROPERTY DAMAGE
2 LIABILITY

3 1. Insuring Agreement

4 a. We will pay those sums that the insured becomes legally obligated to pay
5 as damages because of "bodily injury" or "property damage" to which this
6 insurance applies. We will have the right and duty to defend the insured
7 against any "suit" seeking those damages. However, we will have no duty
8 to defend the insured against any "suit" seeking damages for "bodily injury"
9 or "property damage" to which this insurance does not apply. We may, at
10 our discretion, investigate any "occurrence" and settle any claim or "suit"
11 that may result.

12 . . .

13 **ADDITIONAL INSURED OWNERS, LESSEES OR
14 CONTRACTORS - (FORM B)**

15 This endorsement modifies insurance provided under the following:
COMMERCIAL GENERAL LIABILITY COVERAGE PART.

16 **SCHEDULE**

17 **Name of Person or Organization:**

18 Any person or organization to which you are obligated by virtue of a
written contract to provide insurance such as is afforded by this policy, but
19 only with respect to (1) occurrences taking place after such written contract
has been executed and (2) occurrences resulting from work performed by
20 you during the policy period, or occurrences resulting from the conduct of
your business during the policy period.

21 A person or organization that qualifies as an "insured" under the above
22 paragraph of this Endorsement shall be an additional insured solely with
23 respect to such additional insured's liability for "bodily injury," "property
24 damage" or "personal and advertising injury" caused in whole or in part by
your acts or omissions in the performance of "your work" for the additional
25 insured on or at "commercial construction projects."

26 29. Travelers is informed and believes that USS Cal. tendered its defense to Rockhill
pursuant to contracts with Atlas wherein Atlas agreed to include USS Cal as an additional
27 insured on its policies.

28 30. Travelers is further informed and believes that Rockhill initially accepted the

1 defense of USS Cal.

2 31. However, Travelers is informed and believes that Rockhill has since disclaimed
 3 its duty to defend USS Cal based on its position that the voiding of USS Cal's contracts also
 4 voids any subcontracts into which USS Cal entered. Travelers is informed and believes that
 5 Rockhill has refused and/or failed to pay any fees and costs of the defense of USS Cal.

6 **USS Cal's Contracts Have Been Held To Be Void, Thereby Precluding Claims by SFUSD**
 7 **for Property Damage Covered Under The Policies**

8 32. In the course of discovery in the Underlying Litigation, it was revealed that the
 9 written contracts for the Project between SFUSD and USS Cal were void. As a result, SFUSD
 10 brought a motion for summary judgment on the issue.

11 33. On February 7, 2020, the Court held that 15 of the 16 contracts were void.
 12 Specifically, the Court held that Cal. Evid. Code §§ 17604, 17280, 17295, 17297, and 17307,
 13 required contracts to be ratified or approved by the governing board for the school district
 14 through a formal vote memorialized in board meeting minutes and also that any contract not
 15 first approved by the California Department of General Services, Division of the State Architect
 16 was invalid. The Court further held that USS Cal's 15 contracts for the modular installations at
 17 the Project did not comply with either of these requirements and were therefore void. The only
 18 contract not held void was unrelated to the installation of modular buildings, and instead was
 19 only for the remodel of the Westborough Science Center.

20 34. Travelers is informed and believes that as a result of the Court's order, SFUSD
 21 can no longer seek covered damages arising from defective work at the Project from USS Cal
 22 and SFUSD.

23 35. Because SFUSD is no longer seeking any damages potentially covered under the
 24 T3 Policies and the ASF Policies, USS Cal no longer qualifies as an additional insured under
 25 said policies and Travelers owes no continuing duty to defend USS Cal.

26 36. In turn, because SFUSD is no longer seeking recovery for any potentially covered
 27 property damage from USS Cal, USS Cal cannot pursue liability arising out of potentially
 28 covered property damage from Project Frog. USS Cal cannot be indemnified against damages

1 not sought by SFUSD. Further, because USS Cal does not own the property alleged to be
 2 damaged, it cannot seek recovery on its own for any such alleged defects because USS Cal
 3 cannot have been damaged by said defects.

4 37. Because USS Cal is no longer seeking any damages from Project Frog arising
 5 from any potentially covered claims under the Blazer Policies, ASF Policies, Valley Policies,
 6 and Young Policies, Project Frog no longer qualifies as an additional insured under said policies
 7 and Travelers owes no continuing duty to defend Project Frog.

8 **FIRST CAUSE OF ACTION FOR DECLARATORY RELIEF**

9 **(By Travelers Against Defendants USS Cal, Project Frog, and DOES 1-5)**

10 38. Travelers hereby re-alleges and incorporates by reference each allegation
 11 contained in all preceding paragraphs of this Complaint as though fully set forth herein.

12 39. An actual, present, and justiciable controversy has arisen and now exists between
 13 Travelers, on the one hand, and the Defendants on the other, concerning Travelers' rights,
 14 duties, and obligations under the Policies.

15 40. Travelers contends that it does not have an obligation to defend the Defendants
 16 in the Underlying Litigation for a variety of reasons, including but not limited to, that the
 17 remaining damages sought in the Underlying Litigation do not fall within the scope of coverage
 18 of the policies, the remaining damages in the Underlying Litigation are excluded from
 19 coverage, and the Defendants do not qualify as an insured or additional insured with respect to
 20 the claims alleged in the Underlying Litigation. Travelers is informed and believes that the
 21 Defendants dispute this contention and instead contend that Travelers has an obligation to
 22 continue to defend the Defendants in the Underlying Litigation.

23 41. An actual controversy presently exists between Travelers and Defendants
 24 regarding Travelers' obligation to defend the Defendants in the Underlying Litigation.

25 42. Travelers has no complete and adequate remedy at law to resolve this dispute.
 26 Travelers seeks a judicial resolution of the controversy and a declaration that it does not have
 27 an obligation to defend the Defendants in the Underlying Litigation.

28 43. By reason of the foregoing, a declaratory judgment is both proper and necessary

1 so that the respective rights, duties, and obligations as between Travelers and Defendants may
 2 be determined under the provisions of the Policies.

3 **SECOND CAUSE OF ACTION FOR EQUITABLE REIMBURSEMENT**

4 **(By Travelers Against Defendants USS Cal, Project Frog, and DOES 1-5)**

5 44. Travelers hereby re-alleges and incorporates by reference each allegation
 6 contained in all preceding paragraphs of this Complaint as though fully set forth herein.

7 45. Travelers has paid and will pay certain defense fees and costs incurred in the
 8 defense of the Defendants in the Underlying Litigation. Travelers did not pay these sums as a
 9 volunteer. When Travelers agreed to participate in the defense of the Defendants, Travelers
 10 reserved its rights to seek reimbursement from each Defendant for any defense related
 11 payments that it may make that are not potentially covered under the Policies.

12 46. The Policies limit Travelers' obligation to defend to only those claims covered
 13 under the Policies. To the extent that Travelers pays fees or costs incurred by or on behalf of
 14 the Defendants in connection with the Underlying Litigation for the defense of claims that are
 15 not potentially covered under the Policies, the Defendants will have been unjustly enriched by
 16 such payments.

17 47. In the course of the Underlying Litigation, it was revealed, and the court held,
 18 that the written contracts for the Project were void. Travelers is informed and believes that as
 19 a result of the Court's order, SFUSD is not seeking damages arising from defective work at the
 20 Project and SFUSD cannot seek such damages. Because SFUSD is no longer seeking any
 21 damages potentially covered under the T3 Policies and the ASF Policies, USS Cal no longer
 22 qualifies as an additional insured under said policies and Travelers no longer owes any defense
 23 duty to USS Cal so this cause of action is ripe as to USS Cal.

24 48. In turn, because SFUSD is no longer seeking recovery for any potentially covered
 25 property damage from USS Cal, USS Cal cannot pursue liability arising out of potentially
 26 covered property damage from Project Frog. USS Cal cannot be indemnified against damages
 27 not sought by SFUSD. Further, because USS Cal does not own the property alleged to be
 28 damaged, it cannot seek recovery on its own for any such alleged defects because USS Cal

1 cannot have been damaged by said defects. Because USS Cal is no longer seeking any damages
 2 arising from any potentially covered claims under the Blazer Policies, ASF Policies, Valley
 3 Policies, and Young Policies, Project Frog no longer qualifies as an additional insured under
 4 said policies and Travelers no longer owes any defense duty to Project Frog so this cause of
 5 action is ripe as to Project Frog as well.

6 49. The Defendants have been unjustly enriched by payments made by Travelers for
 7 the defense of claims not potentially covered under the Policies.

8 50. As a result of the unjust enrichment of the Defendants, a quasi-contractual right
 9 of reimbursement has arisen in favor of Travelers in the amount paid for the defense of claims
 10 that are not potentially covered under the Policies, plus interest. The precise amount of the
 11 reimbursement will be subject to proof at trial.

12 **THIRD CAUSE OF ACTION FOR EQUITABLE CONTRIBUTION**

13 **(By Travelers Against Defendants Rockhill, and DOES 6-10)**

14 51. Travelers hereby re-alleges and incorporates by reference each allegation
 15 contained in all preceding paragraphs of this Complaint as though fully set forth herein.

16 52. Travelers is informed and believes and thereon alleges policy(ies) issued by
 17 Rockhill and Does 6-10 provide liability insurance to USS Cal and/or Project Frog, designating
 18 USS Cal and/or Project Frog as a named insured or additional insured thereon. Travelers is
 19 further informed and believes and thereon alleges the allegations made, pleaded, or otherwise
 20 asserted against USS Cal and/or Project Frog in the Underlying Action, if true, set forth claims
 21 for damages which are or were potentially covered under each of the policies.

22 53. As such, Insurer Defendants, and each of them, are or were obligated to
 23 participate in the defense and/or indemnification of Insurer Defendants in the Underlying
 24 Action by reason of their respectively underwritten policies of insurance, which provide an
 25 agreement to undertake the duty to defend suits seeking damages from bodily injury or property
 26 damage potentially covered under their respective policies.

27 54. All conditions precedent to each of Insurer Defendants' obligations under their
 28 respective policies of insurance have been satisfied, waived, and/or excused. Each of Insurer

Defendants' obligations to defend and/or indemnify Insurer Defendants are due and owing.

55. Insurer Defendants, and each of them, have to date failed to participate in the defense and/or indemnification of USS Cal/Project Frog, and/or failed to contribute a full and equitable share toward the costs of defending and/or indemnifying USS Cal/Project Frog which have been incurred and which are being incurred in connection with the Underlying Action.

56. By reason of each Insurer Defendants' failure to discharge their obligations and equitably participate in the defense and/or indemnification of USS Cal/Project Frog, Travelers incurred and/or paid more costs than they would have, had Insurer Defendants agreed to defend and/or contribute a full and equitable share to the defense and/or indemnity of USS Cal/Project Frog in performance of their due and owing obligations under their respective insurance policies.

57. Each Insurer Defendants' failure to discharge their obligations under their respective policies of insurance is wrongful and thus causing an inequitable result, in that Travelers paid more than its equitable share of the costs of defending and/or indemnifying USS Cal/Project Frog in the Underlying Action without the participation of Insurer Defendants in paying for such costs.

58. Because of each Insurer Defendants' 'wrongful failure to discharge their obligations under their respective policies of insurance, Travelers is entitled to an award of equitable contribution, to reimburse it for costs equivalent to each Insurer Defendants' fair and equitable proportionate share of the total costs of defense and/or indemnification incurred in connection with the claims against USS Cal/Project Frog in the Underlying Action, with interest thereon at the prescribed legal rate.

PRAYER FOR RELIEF

WHEREFORE, Travelers prays for judgment as follows:

1. For declarations of this Court of the following:

(a) Travelers has no duty to defend USS Cal in the Underlying Litigation pursuant to any of the Policies;

(b) Travelers has no duty to defend Project Frog in the Underlying Litigation

1 pursuant to any of the Policies;

2 2. For general damages in an amount to be proven at trial, but in no event less than
3 \$650,000;

4 3. For prejudgment interest;

5 4. For costs of suit herein; and

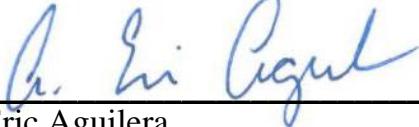
6 5. For such other and further relief as this Court deems just and proper.

7 **JURY DEMAND**

8 Travelers hereby demands a trial by jury pursuant to Federal Rules of Civil Procedure §
9 38(b).

10 DATED: December 17, 2021

11 **THE AGUILERA LAW GROUP, APLC**

12 
13 A. Eric Aguilera
14 Lindsee B. Falcone
15 V. René Daley
16 Attorneys for TRAVELERS PROPERTY
17 CASUALTY COMPANY OF AMERICA and
18 THE TRAVELERS INDEMNITY COMPANY
19 OF CONNECTICUT
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